

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 25, 2005

IN RE:	)	
	)	
BELLSOUTH'S MOTION FOR THE ESTABLISHMENT	)	DOCKET NO.
OF A NEW PERFORMANCE ASSURANCE PLAN	)	04-00150

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ORDER APPROVING SETTLEMENT AGREEMENT

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This matter came before Chairman Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on June 27, 2005 to consider the *Joint Motion to Approve Settlement Agreement* filed by BellSouth Telecommunications, Inc. ("BellSouth") and Competitive Carriers of the South ("CompSouth") on April 29, 2005.

**Background**

The Authority adopted Tennessee's current Performance Assurance Plan ("PAP") that includes Service Quality Measurements ("SQMs"), Self-Effectuating Enforcement Mechanisms ("SEEMs") and Tennessee Performance Measurements for Special Access by order issued October 4, 2002 in Docket No. 01-00193.<sup>1</sup> The PAP was the result of a Settlement Agreement by the parties. Under the terms of that Settlement Agreement, the Authority adopted the SQMs and SEEMs that were adopted by the Florida Public Service Commission ("Florida PSC") on February 14, 2002 and as they may be modified in the

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<sup>1</sup> See *In re Generic Docket on Performance Measurements*, TRA Docket No. 01-00193, *Final Order Accepting Settlement Agreement and Adopting Performance Measurements, Benchmarks and Enforcement Mechanisms*, (October 4, 2002)

future.<sup>2</sup> At that time, the parties agreed not to seek amendments to the SQMs or SEEMs until December 1, 2003.

On May 13, 2004, BellSouth filed its *Motion for the Establishment of a New Performance Assurance Plan* (“*Motion*”) with the Authority. The *Motion* was originally filed in Docket No. 97-00309 but on May 18, 2004 the Authority redirected BellSouth’s filing to new Docket No. 04-00150. BellSouth averred that the PAPs currently in place in all of its nine states were implemented in connection with its petitions for 271<sup>3</sup> relief.<sup>4</sup> BellSouth asserted that the single goal of these plans is to ensure that BellSouth continues to satisfy its obligations under Section 251(c)<sup>5</sup> of the Act to “provide nondiscriminatory unbundled access, interconnection, and resale to competitive local exchange carriers.”<sup>6</sup> According to the *Motion*, the Federal Communications Commission (“FCC”) intended to prevent BellSouth from “backsliding” after it received 271 approval, which BellSouth interprets to mean that its performance does not deteriorate from the level that it demonstrated to both state commissions and the FCC at the time it applied for 271 relief.

BellSouth argued that its current SQMs measure the extent to which it provides nondiscriminatory wholesale service to Competitive Local Exchange Carriers (“CLECs”) and that the SQMs and SEEMs generally have no direct impact on the service provided to end users. It maintained that its proposed PAP prevents backsliding, avoids unjust penalties and undue administrative burden and avoids unjust enrichment of CLECs in cases where its performance remains consistent with or better than the performance that the Authority and the

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<sup>2</sup> The plan was to be effectuated no later than December 1, 2002 with the special access measurements to be deployed shortly thereafter

<sup>3</sup> 47 U.S.C. § 271

<sup>4</sup> *Motion of BellSouth Telecommunication, Inc. for the Establishment of a New Performance Assurance Plan*, p 2 (May 13, 2004)

<sup>5</sup> 47 U.S.C. § 251(c)

<sup>6</sup> *Motion of BellSouth Telecommunication, Inc. for the Establishment of a New Performance Assurance Plan*, p 2 (May 13, 2004)

FCC found to be nondiscriminatory. Additionally, BellSouth complained that it is paying approximately \$1 million each month in penalties to CLECs in Tennessee for maintaining the same level of service that was found to be nondiscriminatory by both the Authority and the FCC.

On May 20, 2004, CompSouth requested that the Authority dismiss BellSouth's *Motion* without prejudice and convene an industry-wide workshop to discuss and review the current PAP and what improvements, if any, should be made. In the alternative, CompSouth asked for a minimum of 60 days in which to file comments, after which the Authority could conduct a workshop, a more formal proceeding or a combination of the two.<sup>7</sup>

On June 3, 2004, BellSouth filed a *Motion to Close Docket* in TRA Docket No. 04-00150, arguing that the Authority erred when it moved the Company's *Motion* from TRA Docket No. 97-00309,<sup>8</sup> to a newly-created docket, TRA Docket No. 04-00150. BellSouth noted that CompSouth agreed that TRA Docket No. 97-00309 is the proper docket in which to consider any motion to amend the current plan, and it believes that the Authority should close TRA Docket No. 04-00150. BellSouth further contended that there is no need for any activity related to this matter to be conducted in Docket No. 01-00193,<sup>9</sup> and it therefore asked the Authority to close that docket as well.

On June 7, 2004, Chairman Tate suggested that BellSouth's *Motion* in TRA Docket No. 04-00150 should be held in abeyance pending a complete review of the existing plan and offered to act as a facilitator or hearing officer for a workshop to be conducted under Docket No. 97-00309 to review the existing plan. BellSouth, CompSouth and the Consumer

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<sup>7</sup> *Response of CompSouth to BellSouth's Motion for the Establishment of a New Performance Measurement Plan*, p. 1 (May 20, 2004)

<sup>8</sup> *See In re BellSouth Telecommunications Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 97-00309

<sup>9</sup> *See In re Generic Docket on Performance Measurements*, Docket No. 01-00193

Advocate agreed with this approach. Thereafter, the panel voted unanimously to hold BellSouth's *Motion* in abeyance.<sup>10</sup>

On September 14, 2004, the Authority held the Performance Measurement Workshop suggested by Chairman Tate.<sup>11</sup> The CLECs presented their primary areas of concern with BellSouth's wholesale performance, while BellSouth emphasized the flaws of the existing plan and argued for adoption of its proposed plan. On September 16, 2004, Director Tate<sup>12</sup> sent a letter requesting that the CLECs send BellSouth a list of their four or five top issues. The CLECs responded with such a list on September 28, 2004 and a follow-up letter on October 13, 2004 listing a CLEC contact for each issue.<sup>13</sup>

On September 23, 2004, BellSouth filed a *Motion to Establish Procedural Schedule* in TRA Docket No. 04-00150, proposing a procedural schedule beginning with discovery requests on October 1, 2004 and a one-day hearing the week of December 13, 2004. At a regularly scheduled Authority Conference held on October 11, 2004, the panel voted unanimously to appoint the General Counsel or his designee as Hearing Officer to prepare the matter for hearing. The panel also voted unanimously to deny BellSouth's June 3, 2004 *Motion to Close Docket*.<sup>14</sup>

On November 8, 2004, CompSouth filed the *Petition to Intervene of CompSouth* ("Petition to Intervene"). In its *Petition to Intervene*, CompSouth argued that since this

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<sup>10</sup> Transcript of Authority Conference, p 8, pp 11-19 and pp 21-24 (June 7, 2004)

<sup>11</sup> The workshop was held under Docket No 97-00309

<sup>12</sup> Director Tate was Authority Chairman from July 1, 2003 to June 30, 2004

<sup>13</sup> The CLECs listed the following operational issues that they claim have a negative impact on their customers

- 1 Troubles Within 30 Days of Provisioning
- 2 Repeat Troubles Within 30 Days
- 3 Customer Trouble Report Rate
- 4 Missed Repair Appointments
- 5 Inability to Test Line Shared Loops
- 6 Premature Trouble Closure

<sup>14</sup> See Transcript of Authority Conference, pp 30-31 (October 11, 2004)

proceeding will address the performance measures and penalties regarding the wholesale provision of services to its members, and therefore their legal rights and responsibilities may be affected or determined, it should be allowed to intervene. On November 12, 2004, BellSouth filed a letter in opposition to the *Petition to Intervene* contending that the *Petition to Intervene* was an attempt by CompSouth to delay the setting of a procedural schedule. On November 17, 2004, the Hearing Officer issued an *Order Granting Petition to Intervene*, allowing CompSouth<sup>15</sup> to intervene. On December 3, 2004, the Hearing Officer issued the *Order Establishing Procedural Schedule*, and the parties began obtaining discovery on December 15, 2004.

On December 21, 2004, BellSouth filed a revision to its proposed plan, averring that the CLECs throughout the region were familiar with these changes. BellSouth's revisions included new language in the Introduction section and revised schedules for Tier 1 and Tier 2 penalties.

On April 15, 2005, the parties filed a letter with the Authority announcing that they had reached a settlement and would soon file a motion seeking Authority approval of the settlement. On April 29, 2005, the parties submitted their *Joint Motion to Approve Settlement Agreement*, including new SQM and SEEM plans to be adopted throughout the BellSouth region. The *Settlement Agreement* was conditioned upon Authority approval.

### **The Proposed Plan**

On April 29, 2005, the parties submitted their *Joint Motion to Approve Settlement Agreement*, including new SQMs and SEEMs plans to be adopted throughout the BellSouth

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<sup>15</sup> CompSouth's *Petition* listed the following members Access Integrated Networks, Inc , MCI, Birch Telecom, Business Telecom, Inc , Covad Communications Company, AT&T, NewSouth Communications Corp , Talk America, Nuvox Communications, Inc , ITC^DeltaCom, Xpedius Communications, Momentum Business Solutions, Network Telephone Corp , KMC Telecom, Z-Tel Communications, Inc and IDS Telecom, LLC

region. According to BellSouth, the proposed PAP is identical to the one most recently presented to the Florida PSC in Order No. PSC-05-0488-PAA-TP entered on May 5, 2005.<sup>16</sup> Additionally, BellSouth asserts that the proposed PAP gauges BellSouth's performance on the basis of transactions rather than measurements, which automatically scales the amount of penalties in proportion to the harm suffered by CLECs and their customers.<sup>17</sup> Also, the special access measures, included as Appendix H with the new SQMs, will supersede the existing special access measures in Tennessee.<sup>18</sup>

#### **June 27, 2005 Authority Conference**

At a regularly scheduled Authority Conference held on June 27, 2005, the panel considered the proposed SQMs and SEEMs. Specifically, the panel noted that the adoption of the proposal is consistent with the agency's past action in Docket No. 01-00193. Additionally, the panel found that the fact that CompSouth is a signatory to the *Joint Motion to Approve Settlement Agreement* indicates that some CLECs have concluded that adoption of the proposal will be beneficial to their continued operations. Further, the panel found that the proposal will encourage continued CLEC operations, which is consistent with the Authority's goal as stated in Tenn. Code Ann. § 65-4-123 (2004). Finally, the panel noted that the proposed PAP provides for annual review and that no CLEC, other than those who are signatories to the *Joint Motion to Approve Settlement Agreement*, has filed an objection in this Docket. Thereafter, the panel voted unanimously to grant the *Joint Motion to Approve Settlement Agreement*.

#### **IT IS THEREFORE ORDERED THAT:**

1. The *Joint Motion to Approve Settlement Agreement* is approved.

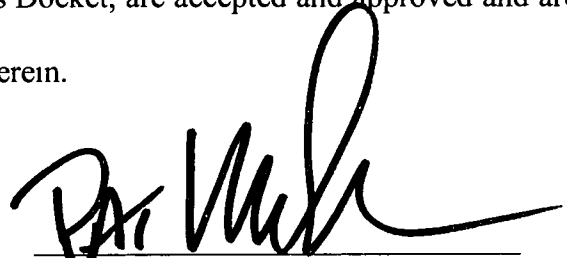
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<sup>16</sup> BellSouth Data Response to Item No 3, (May 24, 2005)

<sup>17</sup> BellSouth Data Response to Item No 4, p 2 (May 24, 2005)

<sup>18</sup> *Joint Motion to Approve Settlement Agreement*, p 1 (April 29, 2005)

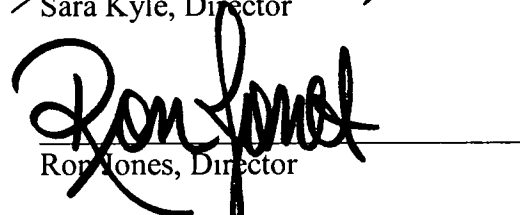
2. The proposed Service Quality Measurement Plan and the Self-Effectuating Enforcement Mechanism Plan, both on file in this Docket, are accepted and approved and are incorporated into this Order as if fully rewritten herein.



Pat Miller, Chairman



Sara Kyle, Director



Ron Jones, Director